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Alberta's Carbon Sequestration Agreement: An Analysis

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Matter Commented On: Alberta's Standard Form Carbon Sequestration Agreement

The Government of Alberta (GoA) has finally released the form or template of the Carbon Sequestration Agreement (CSA) that it will use for carbon capture and storage (CCS) projects organized as hub projects. A hub project is a CCS project in which one party provides transportation and sequestration (T & S) services to variety of emitters. One example is the Atlas Carbon Storage Hub promoted by ATCO EnPower and Shell Canada Products which received its final investment decision in June 2024. Previous ABlawg posts (here, here and here) have reviewed Alberta's decision to adopt a hub approach to CCS in preference to the vertically integrated project approach that characterized Shell's earlier Quest project (see ABlawg post here). A vertically integrated CCS project is a project in which a single party (or joint venture) is responsible for all three elements of the CCS value chain (that is to say, capture and compression, transportation, and injection and geological sequestration). In a hub project (or a hub and spoke project) one party (the hub operator) typically offers transportation and sequestration services (T & S) to a number of different large emitters. I refer readers to the earlier posts for the more detailed explanations of the background.

In those earlier posts on the hub approach I noted with some regret that the GoA had not released the form of the sequestration evaluation agreement or storage/sequestration agreement that it was planning to use. Emails to the Department to obtain a copy of the form met with negative responses. And while, so far as I know, the Department has yet to release the form of the evaluation agreement it has now posted the form of the Carbon Sequestration Agreement (CSA) on its CCS tenure website. I am not sure when this happened (the document properties suggest that it was created 8/9/2024), or what led to this change of heart, but I welcome this step towards transparency. That said, I observe that the form still contains a broadly framed confidentiality clause which includes the agreement itself:

> 15(1) Subject to Articles 15(2), 15(3), 15(4), 15(5) and 15(6), unless otherwise expressly agreed upon by the Parties, the Agreement Holder and Alberta agree that *all information, including this agreement*, any reports and plans provided or collected under this agreement ("Documents and Information"), shall be considered confidential and not disclosed by either Party unless those Documents and Information are required to be produced in accordance with other applicable Enactments. (emphasis added)

The sixteen-page agreement consists of a preamble, 19 operative articles and two schedules (Schedule A, Location and Schedule B, the Hub Development Plan). The Department has emphasised in its guidance documents that industry proponents must accept that the CSA is indeed

a "standard form": "No changes to the standard agreement template wording will be considered." Furthermore, "Only applicants with active evaluation agreements are eligible to apply for a sequestration agreement."(See Carbon Sequestration Agreement Application Guidelines, at 2 and 1).

The Preamble

The Preamble recites the history of the hub idea and the GoA's two calls for proposals and indicates that the parties agree that the sequestration activities that are the subject of the CSA

> … will enable and govern open access to the hub, and payment of just and reasonable charges for the hub by Clients seeking to sequester captured carbon dioxide within the subsurface pore space in accordance with the design described in the Agreement Holder's Hub Development Plan.
>
> The Agreement Holder and Alberta further acknowledge and agree that 'open access' is a fundamental requirement of the carbon sequestration hub and as such, it is imperative that the Agreement Holder's project be designed and constructed to optimize utilization of the subsurface pore space, to support any infrastructure interconnection that may be necessary to permit the Alberta emissions market access to the Agreement Holder's sequestration facilities, and to ensure that there is a mechanism for the fair and timely resolution of disputes between the Agreement Holder, its Clients, and its prospective Clients. (CSA, Preamble, at paras D and E.)

I observe that the GoA has not released the form of a Hub Development Plan and I anticipate that these will likely be project-specific, and, as such, there will be pressure to keep them confidential. I discuss below how the parties will operationalize these open access provisions.

The final paragraph of the Preamble contains the important acknowledgment that the CSA "is entered into under the authority of section 9 and section 116 of the *Mines and Minerals Act*." (*MMA*, RSA 2000, c M-17). This acknowledgement is repeated in essentially the same terms in Article 3(1) of the CSA and in slightly different terms in Article 2(4): "For clarity, this agreement is an agreement as defined in section 1(1)(a) and under Part 9 of the MMA." This acknowledgement is important for at least two reasons.

First, s 116 is found in Part 9 of the *MMA* headed "Sequestration of Carbon Dioxide". Section 116 authorizes the Minister to "enter into an agreement with a person that grants that person the right to inject captured carbon dioxide into a subsurface reservoir for sequestration". As an agreement under Part 9, the provisions of Part 9 dealing with such things as the transfer of liability and indemnity (s 121) should apply to the CSA – much as they do to standard form permits and licences issued under the terms of the *Carbon Sequestration Tenure Regulation*, Alta Reg 68/2011 (CSTR). These provisions would *not* apply to an agreement concluded under the sole authority of s 9.

Second, an agreement under s 9 of the *MMA* (the so-called Crown agreement provision) allows the Minister to vary provisions of Part 9 (and indeed other provisions of the *MMA*) that would otherwise be applicable. Section 9 provides as follows:

> 9 Notwithstanding anything in this Act or any regulation or agreement, the Minister, on behalf of the Crown in right of Alberta, may
>
> (a) enter into a contract with any person or the government of Canada or of a province or territory respecting
>
> (i) the recovery of a mineral and the processing, sale or other disposition of the mineral or of a product obtained from the mineral;
> (ii) the development of mines or quarries for the recovery of minerals;
> (iii) the storage or sequestration of substances in subsurface reservoirs;
> (iv) the royalty reserved to the Crown in right of Alberta on the minerals recovered;
> (v) the provision for a consideration payable to the Crown in right of Alberta instead of royalty on the minerals recovered;
> (v.1) the exploration for or the development and recovery of, and any amounts payable on the exploration for or the development and recovery of, geothermal resources associated with minerals or subsurface reservoirs owned by the Crown in right of Alberta;
> (vi) any matter that the Minister considers to be necessarily incidental to, in relation to or in connection with any of the matters referred to in subclauses (i) to (v.1);
>
> (b) issue an agreement
>
> (i) containing a provision that is a variation of a provision of this Act or the regulations that would otherwise apply to the agreement, or
> (ii) making inapplicable a provision of this Act or the regulations that would otherwise apply to the agreement;
>
> (c) issue an agreement containing a provision providing for the waiver by the lessee of a benefit under this Act or any other Act under the administration of the Minister.

Section 9 presents three options, at least some of which are mutually exclusive. Option one (at para (a)) is a *contract* addressing such matters as "the storage or sequestration of substances in subsurface reservoirs". Option two (at para (b)) is an "*agreement*" which permits a variation of otherwise applicable provisions of the *Act*, regulations or any other statute under the administration of the Minister. "Agreement" is a defined term under the *Act* (s 1(1)(a)) and "means an instrument issued pursuant to this *Act* or the former *Act* that grants rights in respect of a mineral, subsurface reservoir, or geothermal resource, but does not include a notification, a transfer referred to in section 12, a unit agreement or a contract under section 9(a)". Since a CSA is also an agreement for the purposes of Part 9 of the *Act*, the specific authority in s 9 on which the parties are relying must be s 9(b) (see also Article 2(4) of the CSA). Option three (at para (c)) deals with agreements

in which a lessee waives a benefit and is perhaps relevant to Article 6(2) of the CSA and s 12(3) of the CSTRs. Whereas s 12(3) of the CSTRs contemplates that the area of a sequestration lease may only be reduced on the application of the lessee, Article 6(2) as detailed below contemplates that the Minister may also decrease the size of a Location on their own motion. In sum the legal authority for the CSA form is most likely ss 9(b) and(c) and s 116 of the *MMA*. The CSA form cannot be based on s 9(a) of the *MMA* since an agreement and a contract are two different things under the *Act*.

It is therefore clear that the terms of the CSA need not be consistent with, and may vary, the terms of the *MMA* and the CSTRs. What is less clear is just when the CSA is varying the default legislative requirements and when it is not. For example, is the holder of a CSA issued (*inter alia*) under s 116 to be treated as if it were the holder of a sequestration lease under the CSTR except where there is a clear conflict (e.g. the maximum area rule in 12(1) CSTR or the rules for reducing the size of the lease discussed above)? I return to this point in a later section of this post ("What happens when the CSA is silent?").

Finally, it is worth emphasising that Shell's Quest project does not have a s 9 Agreement. That project operates on the basis of a series of standard form sequestration leases issued under the terms of Part 9 of the *MMA* and the CSTRs. Here's a link to electronic versions of Shell's six leases.

The Operative Articles

The 19 operative articles are as follows:

Article 1: Definitions
Article 2: Interpretation
Article 3: Application and Compliance with Legislation
Article 4: Initial Term and Additional Terms
Article 5: Grant
Article 6: Location
Article 7: Issuance Fee and Rental
Article 8: Obligations
Article 9: Reporting and Examination of Records
Article 10: Termination
Article 11: Assignment
Article 12: Change in Ownership or Control
Article 13: Representatives
Article 14: Notices
Article 15: Confidentiality and Freedom of Information and Protection of Privacy
Article 16: Dispute Resolution
Article 17: Indemnity and Insurance
Article 18: Survival of Terms
Article 19: General Provisions

Many of these provisions are standard to any commercial arrangement and do not merit further comment, so what follows is somewhat selective.

Article 3: Application and Compliance with Legislation

I think of the *MMA* principally as a property and revenue (royalties, bonus payments) statute and not a regulatory statute. The province's regulatory statutes include the *Responsible Energy Development Act*, SA 2012, c R-17.3 (*REDA*) the *Oil and Gas Conservation Act*, RSA 2000, c O-6 (*OGCA*) and the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12. You would think that it would go without saying that the holder of Crown sequestration rights (a property matter) would have to comply with all relevant regulatory statutes, much as is the case for the holder of Crown petroleum and natural gas rights. But both Part 9 of the *MMA* (see, for example, s 115(2), s116(2), and s117) and Article 3 of the CSA go to some lengths to spell this out.

> The Agreement Holder acknowledges that it is obligated to comply with all relevant Enactments and any applicable Orders, Directives and Rules of the Regulator [Alberta Energy Regulator (AER)].
>
> The Agreement Holder agrees to obtain and maintain all necessary licences, permits, approvals, or other consents required pursuant to the legislation applicable to activities contemplated pursuant to the rights granted under this agreement, prior to commencing and during such activities, and regarding surface access to the Location, as such legislation may be amended from time to time. The Parties agree and acknowledge that obtaining all such licences, permits, approvals, or other consents constitutes a condition precedent to the exercise of rights granted to the Agreement Holder under this agreement and that any failure to maintain these represents a fundamental breach of this agreement. (CSA, Article 3, at paras 2 and 3.)

Perhaps more interesting is paragraph 4 which contains a specific undertaking in relation to abandonment, reclamation and post-injection activities:

> The Agreement Holder further acknowledges and agrees that it shall be obligated, at its sole expense, to undertake any and all closure, abandonment and post-injection activities as may be required by any applicable Enactments, or as may be stipulated to be conditions or requirements of any approvals, authorizations, licenses or permits issued by the Regulator. (CSA, Article 3, at para 4, and note as well Articles 8(e) and 10(3).)

Duration and Grant: Articles 4 and 5

A CSA is granted for a 15-year initial term subject to renewal for additional 15-year periods as provided for in Article 4. In my view, a 15-year initial term is surprisingly short for a hub project since it has the necessary implication that the Agreement Holder will need to set its tariff for T & S services at a rate that will allow it to recover all of its capital investments during that initial term, even though the physical assets may have a longer life. This front-end loads cost recovery and will result in higher tariffs (and thus a barrier to uptake) than necessary. The renewal provisions may offer the Agreement Holder some comfort, but they fall far short of secondary term oil and gas

lease provisions that allow a lessee to hold on to the lease for so long as the property is capable of commercial production (or in this case for so long as the CSA is capable of accepting additional volumes of CO_2 for sequestration) or the cognate provisions on notice of non-productivity in s 19 of the *Petroleum and Natural gas Tenure Regulation*, Alta Reg 263/1997. Instead, the renewal provisions allow the Agreement Holder to make an application for renewal, and, provided that the Minister concludes that the Agreement Holder is in good standing with both the CSA and the Hub Development Plan "the Minister's consent to the application for Additional Terms shall not be unreasonably withheld." (CSA, Article 4(3)). (On the concept of unreasonable withholding of consent in an oil and gas context see *IFP Technologies (Canada) Inc. v EnCana Midstream and Marketing*, 2017 ABCA 157 (CanLII).)

It bears mentioning that Article 4 of the CSA contains the CSA's only reference to the CSTRs. The particular provision stipulates that the application for an extension must be made in accordance with s 11 of the CSTRs. This requires, inter alia, that the applicant provide both an updated monitoring, measurement and verification (MMV) plan and a closure plan. I will return to this point below.

Article 5(1) is the granting clause of the CSA and grants the Agreement Holder the right (as a matter of property) "to drill wells, conduct evaluation and testing and inject captured carbon dioxide into deep subsurface reservoirs within the Location for the purposes of sequestration." The right is not described as an exclusive right perhaps because of concerns as to competing uses of pore space, but surely the Crown should at least covenant not to grant the same sequestration rights for the location to another party. Note here as well that the GoA's standard form pore space lease, designed to accommodate the GoA's small scale and remote carbon sequestration tenure, frames the sequestration right of the lessee under that agreement in "exclusive terms".

The grant does not extend to any rights to minerals or geothermal resources and indeed the Agreement Holder covenants to "take reasonable steps to conserve minerals and geothermal resource found within the location by ensuring recovery of the minerals and geothermal resource is impaired only to the extent necessary to conduct approved sequestration activities." (CSA, Article 5(2)). This is an obligation that is additive to the constraints on CCS projects already imposed by the general law through s 39(1.1) of the *OGCA*.

> The Regulator may not approve a scheme for the disposal of captured carbon dioxide to an underground formation under subsection (1)(d) that is pursuant to an agreement under Part 9 of the *Mines and Minerals Act* unless the lessee of that agreement satisfies the Regulator that the injection of the captured carbon dioxide will not interfere with
>
> (a) the recovery or conservation of oil or gas, or
> (b) an existing use of the underground formation for the storage of oil or gas.

Areal Extent or Location of the CSA: Article 6 and Schedule A

Article 6 of the CSA along with Schedule A of the CSA governs the areal extent or Location of the CSA. "Location" is a defined term in the CSA and means "pursuant to Article 6, the subsurface area or areas underlying the surface area of the lands described in Schedule A, and as amended,

substituted or replaced from time to time". I understand that CSAs will define and describe location in terms of particular target injection formation(s) in the Schedule (although perhaps not as extensively as for Quest (i.e. "pore space below the top of the Elk Point Group")).

The principal purpose of Article 6 is to govern the circumstances under which the Agreement Holder may apply for a modification of the Location and the circumstances under which the Minister, either upon that application or of their own motion, may seek to modify the Location. More specifically Article 6(2) provides that:

> The Minister may, upon giving notice in writing, modify, increase or decrease the areas or size of the Location. The Minister's discretion to modify, increase or decrease the size of the Location under this agreement, in accordance with this Article 6(2) shall not be exercised capriciously or arbitrarily, and may be exercised where the Minister is of the opinion that such modification is in the public interest, having regard to certain factors including, but not limited to:
>
> (a) the pore space is no longer required due to changes in the anticipated amount of CO2 to be sequestered;
>
> (b) operational data presents evidence that
> (i) areas of pore space in the Location will not be utilized;
> (ii) the Location should be adjusted to reflect updated modelling of the CO2 plume; or
> (iii) the capacity of the pore space within the Location is lower than projected, requiring additional tenure to accommodate sequestration volumes
>
> (c) a carbon sequestration hub is being developed in phases and the Agreement holder is transitioning lands that are under an Evaluation Agreement;
>
> (d) the Agreement Holder has obtained prior written consent of the Minister to modify its Hub Development Plan, requiring changes to the Location; or,
>
> (e) the Agreement Holder fails to comply with any Enactments.

This is a very broad "public interest" power claimed by the Minister, the only constraint being that the power must not be exercised "capriciously or arbitrarily". Since at least some of the issues associated with the need to expand or reduce storage space will be technical in nature it is perhaps unfortunate that the CSA does not provide a role for the AER with respect to those technical matters that may have a significant impact on an Agreement Holder. That said, there is certainly an important public interest in prioritizing the efficient use of storage space and ensuring that pore space is not sterilized. The Minister's powers may also be informed by the extensive reporting requirements of Article 9.

Hub Related Obligations: Articles 8 and 16

As noted in the commentary on the Preamble (above), the Agreement Holder must offer sequestration services to its Clients (a defined term) on an open access basis. This section of the post addresses how the CSA seeks to operationalize this commitment. "Client" is defined to mean "any legal entity other than the Agreement Holder who wishes to sequester captured carbon dioxide within the Location and *who seeks to enter into a commercial arrangement with the Agreement Holder* for that purpose". The italicized text confirms that the arrangement is a commercial arrangement and not a regulated arrangement. One might anticipate that the details of the obligation might be further elaborated in the proponent's Hub Development Plan, but Article 8 of the CSA does provide further guidance insofar as it requires the Agreement Holder "in accordance with any relevant Enactments" to:

> … establish rates to Clients which are fair and provide for reasonable cost recovery to the Agreement Holder for the relevant infrastructure services and activities. The Agreement Holder shall further provide information to enable Clients and Alberta to understand how rates are set; [and]
>
> ensure that the project, as described in the Hub Development Plan, is designed and constructed to optimize utilization of the subsurface pore space to support any infrastructure interconnection that may be necessary to permit the Alberta emissions market access to the Agreement Holder's sequestration facilities. (CSA, Article 8, at paras (c) and (d))

In addition, the concluding sentence of Article 8 indicates that "Where disputes arise between the Agreement Holder and any Client or prospective Client in respect of the Agreement Holder's obligations under this Article, such disputes shall be resolved pursuant to Article 16", Dispute Resolution. Article 16 is best described as a work in progress on this point insofar as Article 16(3) indicates that "Disputes arising between the Agreement Holder and any Client or prospective Client, in relation to rights and obligations of the Agreement Holder under this agreement shall be resolved in accordance with any procedures set out in relevant Enactments." This is a curious provision insofar as it seeks to grant a third party a right to use as-yet-unspecified procedures in a relevant enactment ("Enactment" is defined as "any relevant legislation, including any acts, regulations, rules, directives, guidelines and by-laws as amended, substituted or replaced from time to time"). I have previously canvassed some possible relevant "enactments" that might be engaged here (e.g. utility statutes and common carrier/processor obligations) (Nigel Bankes & Rick Nilson, "Economic Regulation and the Design of a Carbon Infrastructure for Alberta" in Roggenkamp et al, eds, *Energy Networks and the Law: Innovative Solutions in Changing Markets* (New York, NY: Oxford University Press, 2012) 231) and I won't repeat that analysis here. Suffice it to say for present purposes, that these potentially relevant enactments would need to be amended before they could be triggered by a client or prospective client. In light of that, Articles 16(1) and (2) of the CSA seem unsatisfactory and support the "work in progress" comment above:

> The Minister may, in the Minister's sole discretion, establish alternative dispute resolution processes in relevant Enactments.

> Notwithstanding Article 16(1), the Minister shall not be obliged to establish alternative dispute resolution processes, and in any case the Enactments shall govern. (CSA, Article 16(1) and (2).

My sense is the GoA is hoping that both the Agreement Holder and its prospective Clients will share a common interest in dealing with these issues on a private commercial basis and that both will therefore seek to avoid a regulatory solution. But as the CSA is written, a Client who seeks a regulatory solution for whatever reason will have to be prepared to lobby the Minister for relief. And that may become a significant concern for emitters seeking access to transportation and sequestration facilities and space as Canada's carbon price continues to rise.

Cancellation/Termination of the CSA: Article 10

Article 10 affords the Minister broad powers of cancellation on notice and for cause, subject to the right of the Agreement Holder to cure any deficiency. The notice and cure period (90 days) is longer than that provided in s 45 of the *MMA* (30 days) and presumably this is one of the instances in which the parties are relying on s 9(b) of the *MMA* to vary the generally applicable provisions of the *Act*.

Assignment and Change in Ownership or Control: Articles 11 and 12

The general provisions of the *MMA* do not typically impose a consent requirement for any assignment or change in ownership or control in relation to agreements issued under the terms of the *Act* (see *MMA*, s 91). Part 9 of the *MMA* however does restrict transfers through s 118:

> 118(1) A lessee may not transfer an agreement under this Part without the consent in writing of the Minister.
>
> (2) The Minister may in the Minister's discretion refuse to consent to a transfer of an agreement under this Part.

Article 11 repeats this prohibition but also provides that the Minister is entitled to request information to support their decision, specifically in order to assess whether the proposed assignee would "pose any new or increased risk to Alberta or would otherwise be in the public interest". More specifically Article 11(2) provides that

> The Minister shall be entitled to request any information about the proposed transferee or assignee as the Minister deems necessary to evaluate that entity as a new project proponent. Where the Minister is of the opinion that:
>
> (a) permitting the proposed transfer or assignment would not pose any new or increased risk to Alberta or would otherwise be in the public interest, the Minister's consent to the proposed transfer or assignment shall not be unreasonably withheld; or,

(b) permitting the proposed transfer or assignment would pose any new or increased risk to Alberta or would otherwise not be in the public interest, the Minister may refuse to consent to the proposed transfer or assignment.

Presumably, this more specific provision is intended to qualify the subjective statement of the Minister's discretionary power found in both s 118 of the *MMA* and paragraph 1 of Article 11 of the CSA to the effect that: "This agreement cannot be transferred or assigned in whole or in part to any other party without the express written consent of the Minister, *which may be granted at the Minister's discretion*." (emphasis added)

There are similar provisions in Article 12 dealing with changes in ownership or control.

Indemnity: Article 17

Article 17 of the CSA imposes on the Agreement Holder very broad indemnity obligations perhaps better suited to exploration and production operations than to a party offering utility-like transportation and sequestration services. Presumably, an Agreement Holder will endeavour to share or pass this obligation on to its Clients, or otherwise reflect this risk in the rates that it charges for its services.

1. The Agreement Holder shall keep Alberta indemnified against

(a) all actions, claims and demands brought or made against His Majesty by reason of anything done or omitted to be done, whether negligently or otherwise, by the Agreement Holder or any other person in the exercise or purported exercise of the rights granted and duties imposed under this Agreement; and,

(b) all losses, damages, costs, charges and expenses that Alberta sustains or incurs in connection with any action, claim or demand referred to in Article 17(1)(a).

Such indemnification shall survive the termination of this agreement, until the issuance of a closure certificate under the MMA.

2. Alberta shall not be liable to the Agreement Holder and the Agreement Holder waives and releases Alberta in connection with any claim for any special, incidental, indirect or consequential loss or damages suffered by or brought against the Agreement Holder with respect to any matter related to this agreement or to the carbon sequestration hubs. This provision shall survive this agreement.

3. Every right, exemption from liability, defence and immunity of whatsoever nature applicable to Alberta or to which Alberta is entitled in this agreement, shall also be available and shall extend to protect each agent and employee of Alberta, acting in the course of or in connection with his or her employment. For the purposes of all the foregoing provisions of this section, Alberta is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of each person who is or who

> becomes the agent or employee of Alberta from time to time. (CSA, Article 17, at paras 1 – 3)

The CSA does not specifically speak to what happens when a closure certificate is issued under s 120 of the *Act* but presumably the intent is that the Agreement Holder will then be entitled to the benefits and indemnity offered by s 121 of the *Act*. More specifically, the Crown will step into the shoes of the Agreement Holder in relation to the Agreement Holder's statutory obligations (s 121(1)) and the Crown will also indemnify the agreement holder against "liability for damages in an action in tort brought by another party if … the liability is attributable to an act done or omitted to be done by the lessee in the lessee's exercise of rights under the agreement in relation to the injection of captured carbon dioxide." (s 122(2))

What Happens When the CSA is Silent?

The CSA is also silent on some other matters covered by Part 9 of the *MMA* and the CSTR. For example, while Article 8(1) makes it clear that the holder of a CSA must contribute to the Post-closure Stewardship Fund (*MMA*, s 122(3) and CSTR, s 20) it is silent on some other important matters. For example, the CSTRs create an obligation for a carbon sequestration lessee to file and renew, every three years, monitoring measurement and verification plans (MMV) (ss 15 – 16) and closure plans (ss 18 – 19) and yet the CSA is almost silent on these matters. Monitoring is mentioned in Article 9(2) and (3) but in very discretionary terms, and both MMV and closure plans are incorporated by reference in the renewal provision (Article 4(2) as discussed above) but that would only apply every 15 years rather than every 3 years. Is it simply understood that all the MMV and closure plan rules are to apply to CSA Agreement Holders as well as those who hold CSTR leases? Are these provisions simply deemed to be relevant under Article 3(2) of the CSA even though the CSTR provisions are directed by their terms at those who hold CSTR leases and not CSA Agreement Holders? Or are these provisions considered to apply because the responsibility for Closure Plans and MMV have now been transferred to the AER? (On this point see Bankes, "The Department of Energy and Minerals Finally Releases the Text of a Ministerial Order Delegating Technical CCS-Related Decision-Making Authority to the Alberta Energy Regulator"). Or maybe these issues have been dealt with in the Hub Development Plans? In sum, these issues could usefully be clarified in the standard form CSA. I think that we would all have a clearer understanding of how these documents fit together if the CSA contained a provision along the lines of the following:

> The Agreement Holder is deemed to be the holder of a carbon sequestration lease under the CSTRs except to that extent that that is inconsistent with the terms of this Agreement in which case the terms of this Agreement will prevail.

All in all, one does have to wonder what an "entire agreement" clause actually means in the context of agreement like this issued under the authority of a statute with all sorts of references to other enactments!

> This agreement contains the entire agreement of the Parties concerning the subject matter of this agreement and except as expressed in this agreement, there are no other

understandings or agreements, verbal or otherwise, that exist between the Parties. (CSA, Article 19(1)).

Hub Development Plan

As noted above, Schedule B to the CSA will be the Agreement Holder's Hub Development Plan which will be an updated version of what the Agreement Holder presented as part of its response to the Request for Proposals. The Department has posted a Hub Development Plan Template and a set of Instructions, but the Department's original Request for Full Project Proposals of March 2022 perhaps provides more useful guidance than the original template.

Conclusions

I am happy to see that the GoA has decided to publicly release the form of sequestration agreement that it is using to support CCS hub projects. Secrecy is not a good plan if you want to secure public trust and there can be no good reason for insisting that an agreement such as this relating to the use of public resources should be held confidential. To that end, the GoA should consider removing the reference to "this agreement" in s 15(1) of the CSA quoted above. In my view the GoA could also usefully clarify whether it is intended that the provisions of the CSTRs that apply to the holders of sequestration leases are also to apply to CSA Agreement Holders unless clearly inconsistent the terms of the CSA (e.g. the provisions on the area of a lease or reducing the area of a lease discussed above.)

But it is also important to question why the GoA has adopted this approach to granting tenure. The GoA already had in place a serviceable set of tenure rules for CCS projects in the form of the CSTRs. If they needed amending why not publicly amend them rather than adopting this backdoor method of amendment in which a bilateral (albeit in a standard form) commercial-style agreement seeks to vary the application of the general rules The result is both less transparent and complex and invites interpretive arguments as to the extent of that variation. Another possible result is that what we might conceive of as the exception (a s 9 Crown agreement), has become the norm - without any real public acknowledgement of that transformation.

I would also like to have a sense of what Hub Development Plans will look like since they obviously represent an important part of the total package hub package. While I acknowledge that some of the elements of such a Plan may be commercially and competitively sensitive, the GoA should be looking at whether it is possible to provide a summary of such Plans, or even the text subject to appropriate redactions. After all, pore space for CCS purposes is a publicly owned resource: *MMA* s 15.1.

Postscript

Shortly before I finalized this post the GoA also released the terms of a Draft Quantification Protocol for CO_2 Capture and Permanent Geologic Sequestration v2.0. I plan to provide a commentary on that draft shortly, but it seems strange to me that while the GoA contemplates a 20-year crediting period for an approved CCS project under this Quantification Protocol, it insists

on a maximum 15-year primary terms for a CSA. Do these two Departments of the GoA speak to each other?

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